UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. ____________

INGO KUMBRINK, an individual,

Plaintiff,

v.

THE HYGENIC CORPORATION,

Defendant.

_______________________________/

COMPLAINT

Plaintiff, INGO KUMBRINK ("Plaintiff"), hereby files his Complaint against THE HYGENIC CORPORATION ("Defendant"), and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. This is a classic case of willful trademark infringement based on Defendant's unauthorized use of Plaintiff's K-TAPE and K-TAPING trademarks. This Complaint alleges in four counts that Defendant committed: (1) infringement of Plaintiff's trademarks in connection with the K-TAPE and K-TAPING trademarks, in violation of §43(a)(1)(A) of the Lanham Act; (2) dilution under of Fla. Stat. §495.151; (3) trademark infringement in violation of the common law of Florida, and (4) unfair and deceptive trade practices in violation of Fla. Stat. §501 .204.

2. Plaintiff is an individual and citizen of Germany.

3. Defendant is a Delaware corporation with its principal place of business located in Akron, Ohio.

4. This Court has personal jurisdiction over Defendant because Defendant has continuous and systematic contacts with the State of Florida. Such contacts include, but are not limited to, Defendant's conduct in selling, offering for sale, advertising and promoting its rubber,

elastic and synthetic products for use in physical therapy, athletic training, and the medical field, to customers located in Florida.

5. This Court has Federal subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), by virtue of 15 U.S.C. §1051 *et seq.*, in that the case arises out of § 43(a) of the Lanham Act for trademark infringement.

6. Venue is proper, under 28 U.S.C. §1391 because on information and belief, a substantial part of the actions or omissions giving rise to the claim occurred in the Southern District of Florida.

GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

7. Plaintiff is the owner of U.S. Trademark Registration No. 4,072,336 for the mark K-TAPE ("the 336 registration") and U.S. Trademark Registration No. 3,949,702 for the mark K-TAPING ("the 702 registration"). Attached hereto as *Exhibit A* is a copy of the '336 and '702 registrations. Plaintiff has used the K-TAPE and K-TAPING marks to sell his products in the U.S. since 2008.

8. K-TAPE is a trademark for a brand of Kinesiology Therapeutic Tape ("Kinesiology Tape"), an elastic sports tape designed to provide pain relief and support for muscles, joints, and tendon-related aches and pains. It is lightweight, comfortable to wear, and provides targeted pain relief which has made it the go-to solution for professional athletes and Olympians as well as millions of everyday athletes.

9. Multiple versions of Kinesiology Tape exist on the worldwide market. However, none of them use the trademarks K-TAPE or K-TAPING other than Plaintiff's products.

10. As part of his business operations, Plaintiff has exclusively marketed and sold his products using the K-TAPE and K-TAPING trademarks which have been in active use since 2008.

11. Due to Plaintiff's exclusive use of the trademarks K-TAPE and K-TAPING, the marks have become widely recognized by consumers in connection with Plaintiff's products.

12. Plaintiff has spent a significant amount financially to market his goods and services under the K-TAPE and K-TAPING marks.

13. Defendant is known for its rubber sheeting and tubing products. It has a division called Thera-Band, through which it markets and sells resistive exercise and therapy products.

14. Defendant has not yet developed a well-known brand for Kinesiology Tape.

15. Defendant has filed a Petition for Cancellation before the Trademark Trial and Appeal Board to cancel Plaintiff's 702 registration for K-TAPING, through which Defendant admits the unauthorized use of K-TAPE and K-TAPING trademarks. The Cancellation proceeding is pending. Attached hereto as *Exhibit B* is a copy of the Petition for Cancellation No. 92060729.

16. In the Petition for Cancellation, Defendant alleges its Kinesiology Tape product was released on January 1, 2015. (Exhibit B).

17. Defendant knew or should have known, prior to the development, branding and release of its product that Plaintiff had registered trademarks for K-TAPE and K-TAPING.

18. Nevertheless, Defendant intentionally proceeded to develop and brand its product with the infringing marks, apparently believing it is better to ask forgiveness later than to seek permission first.

19. Defendant alleges that it "needs" to use K-TAPE and K-TAPING marks without restriction, in order to be competitive, to sell its kinesiology tape products under its THERABAND mark. (Exhibit B).

20. Defendant's use of the marks is likely to cause confusion, mistake or deception as to the affiliation, connection or association between Plaintiff and Defendant. Alternatively, Defendant's use of the K-TAPE and K-TAPING marks is likely to mislead consumers into believing that Defendant's product is somehow sponsored by, endorsed by, or approved by Plaintiff, or that Defendant and Plaintiff are affiliated.

21. All conditions precedent to bringing this action have occurred or been waived.

22. Plaintiff has retained undersigned counsel in this matter and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
TRADEMARK INFRINGEMENT IN VIOLATION OF §43(A)(L)(A) OF THE LANHAM ACT

23. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

24. Defendant's use of the K-TAPE and K-TAPING marks to market and sell Kinesiology Tape in interstate commerce constitutes a false designation of origin and/or false description or representation, which is likely to deceive and mislead consumers into believing that Defendant's product originate from Plaintiff, or that it or its goods are otherwise affiliated with, licensed, sanctioned or endorsed by Plaintiff.

25. Defendant's infringement of the Plaintiff's marks constitutes a violation of 15 U.S.C. §1125(a).

26. Plaintiff has been damaged by Defendant's conduct as alleged herein.

WHEREFORE, Plaintiff requests the Court enter a judgment against the Defendant (A) Preliminarily and permanently enjoining and restraining the Defendant and its parent corporations, subsidiary corporations, partners, officers, servants, agents, employees, attorneys and representatives, and those parties acting in concert or participating with them, from using the K-TAPE and K-TAPING marks; (B) Ordering Defendant to pay Plaintiff an amount equal to the greater of three times Defendant's profits or three times Plaintiff’s damages; (C) Ordering Defendant to make an accounting of all its costs and allowable deductions; (D) Ordering Defendant to pay Plaintiff’s prejudgment interest; (E) Ordering Defendant to pay Plaintiff’s reasonable costs; (F) Ordering Defendant to pay Plaintiff’s reasonable attorneys' fees; (G) Ordering that all goods, labels, signs, prints, packages, wrappers, receptacles, documents, advertisements, plates, molds, matrices, in the possession of the Defendant or its agents, bearing marks that are the same or confusingly similar to the K-TAPE and K-TAPING marks be destroyed; (H) Ordering Defendant to prepare and file within thirty days of this Court's order a written report outlining how they have complied with this Court's order; and (I) Granting Plaintiff such other and further relief this Court deems just and proper.

COUNT II
INJURY TO BUSINESS REPUTATION AND DILUTION
FLA. STAT. §495.151

27. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

28. Defendant’s use of the K-TAPE and K-TAPING marks is likely to injure Plaintiff’s business reputation or dilute the distinctive quality of the K-TAPE and K-TAPING marks.

WHEREFORE, Plaintiff requests the Court enter a judgment against each of the Defendants: (A) Preliminarily and permanently enjoining and restraining the Defendant and its parent corporations, subsidiary corporations, partners, officers, servants, agents, employees, attorneys and representatives, and those parties acting in concert or participating with them, from using the K-TAPE and K-TAPING marks; (B) Ordering that all goods, labels, signs, prints, packages, wrappers, receptacles, documents, advertisements, plates, molds, matrices, in the possession of the Defendant or its agents, bearing marks that are the same or confusingly similar to the K-TAPE and K-TAPING marks be destroyed; (C) Ordering Defendant to prepare and file within thirty days of this Court's order a written report outlining how they have complied with this Court's order; and (D) Granting Plaintiff such other and further relief this Court deems just and proper.

COUNT III
COMMON LAW TRADEMARK INFRINGEMENT

29. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

30. Plaintiff has common law trademark rights in the K-TAPE and K-TAPING marks.

31. Defendant's marketing and sale of products containing the K-TAPE and K-TAPING marks is likely to deceive and mislead consumers into believing that Defendant's product originates from Plaintiff, or that Defendant's goods are otherwise affiliated with, licensed, sanctioned or endorsed by Plaintiff.

32. Defendant's use of the K-TAPE and K-TAPING marks infringes on Plaintiff's common law trademark rights.

33. Plaintiff has been damaged by Defendant's conduct as alleged herein.

WHEREFORE, Plaintiff requests the Court enter a judgment against the Defendant (A) Preliminarily and permanently enjoining and restraining the Defendant and its parent corporations, subsidiary corporations, partners, officers, servants, agents, employees, attorneys and representatives, and those parties acting in concert or participating with them, from using the K-TAPE and K-TAPING marks; (B) Ordering Defendant to pay Plaintiff an amount equal to the greater of three times Defendant's profits or three times Plaintiff's damages; (C) Ordering Defendant to make an accounting of all its costs and allowable deductions; (D) Ordering Defendant to pay Plaintiff's prejudgment interest; (E) Ordering Defendant to pay Plaintiff's reasonable costs; (F) Ordering Defendant to pay Plaintiff's reasonable attorneys' fees; (G) Ordering that all goods, labels, signs, prints, packages, wrappers, receptacles, documents, advertisements, plates, molds, matrices, in the possession of the Defendant or its agents, bearing marks that are the same or confusingly similar to the K-TAPE and K-TAPING marks be destroyed; (H) Ordering Defendant to prepare and file within thirty days of this Court's order a written report outlining how they have complied with this Court's order; and (I) Granting Plaintiff such other and further relief this Court deems just and proper.

COUNT IV
UNFAIR AND DECEPTIVE TRADE PRACTICES
FLA. STAT. §501.201, *ET. SEQ.*

34. Plaintiff reasserts and realleges the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

35. Plaintiff is a "legitimate business enterprise", pursuant to Fla. Stat. §501.202.

36. Defendant decided to act deceptively and unfairly, and thereby violated Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et. seq.*

37. Defendant's false designations of origin, trademark infringement, and trademark dilution constitute unfair and deceptive trade practices within the meaning of Fla. Stat. §501.204.

38. Defendant, acting individually or in concert with others, has engaged in representations, acts, practices and/or omissions in trade or commerce which are material, and which offend established public policy and are unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

39. Defendant willfully engaged in deceptive and unfair acts and practices in that Defendant knew or should have known the methods, acts or practices alleged herein were deceptive, unfair, unconscionable and/or prohibited by law.

40. As a proximate result of Defendant's actions, Plaintiff has suffered actual damages, including but not limited to harm to its business, and incidental and consequential damages.

WHEREFORE, Plaintiff requests the Court enter a judgment against the Defendant (A) Preliminarily and permanently enjoining and restraining the Defendant and its parent corporations, subsidiary corporations, partners, officers, servants, agents, employees, attorneys and representatives, and those parties acting in concert or participating with them, from using the K-TAPE and K-TAPING marks; (B) Ordering Defendant to pay Plaintiff's prejudgment interest; (C) Ordering Defendant to pay Plaintiff's reasonable costs; (D) Ordering Defendant to pay Plaintiff's reasonable attorneys' fees; (D) Ordering that all goods, labels, signs, prints, packages, wrappers, receptacles, documents, advertisements, plates, molds, matrices, in the possession of the Defendant or its agents, bearing marks that are the same or confusingly similar to the K-TAPE and K-TAPING marks be destroyed; (E) Ordering Defendant to prepare and file within thirty days of this Court's order a written report outlining how they have complied with this

Court's order; and (F) Granting Plaintiff such other and further relief this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Ingo Kumbrink, prays that the Court enter judgment:

A. For damages in an amount to be proven at trial for unfair competition under 15 U.S.C. §1125 (Lanham Act §43(a));

B. For damages to be proven at trial for common law infringement and unfair competition;

D. For an injunction by this Court prohibiting Defendant from engaging or continuing to engage in the unlawful, unfair, or fraudulent business acts or practices described herein;

E. For treble damages suffered by Plaintiff as a result of the willful and intentional infringements, under 15 U.S.C. §1117(b);

F. For Plaintiff's reasonable attorney's fees;

G. For all costs of suit;

H. For such other and further relief as the Court may deem just and equitable.

GOLDEN & GRIMES LLP
Counsel for Plaintiff
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By: *__/s/YASIR BILLOO__*
Yasir Billoo, Esq.
Florida Bar No.: 718351
ybilloo@goldengrimes.com

EXHIBIT A

United States of America

United States Patent and Trademark Office

K-TAPE

Reg. No. 4,072,336

Registered Dec. 20, 2011

Int. Cl.: 5

TRADEMARK

PRINCIPAL REGISTER

KUMBRINK, INGO (FED REP GERMANY INDIVIDUAL)
FRIEGSTRASSE 5
DORTMUND, FED REP GERMANY 44229

FOR: ELASTIC, AIR-PERMEABLE MEDICAL ADHESIVE TAPE; WOUND DRESSING MATERIAL AND MEDICAL ADHESIVE TAPE MATERIAL; MEDICATED COMPRESSES, ADHESIVE STRIPS AND ADHESIVE TAPES FOR MEDICAL PURPOSES, ADHESIVE BANDAGES FOR HEALTH AND DRESSING PURPOSES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF ERPN CMNTY TM OFC REG. NO. 006376024, DATED 11-13-2008, EXPIRES 10-18-2017.

SEC. 2(F).

SER. NO. 77-625,590, FILED 12-3-2008.

JOHN E. MICHOS, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE
DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

K-TAPING

Reg. No. 3,949,702

Registered Apr. 26, 2011

Int. Cl.: 44

SERVICE MARK

PRINCIPAL REGISTER

KUMBRINK, INGO (FED REP GERMANY INDIVIDUAL)
FRIEGSTRASSE 5
DORTMUND, FED REP GERMANY 44229

FOR: PHYSIOTHERAPEUTIC TREATMENT SERVICES BY MEANS OF TAPING; PHYSIO-THERAPEUTIC, VETERINARY AND MEDICAL SERVICES AND TREATMENTS UTILIZING THERAPEUTIC TAPING; CHIROPRACTOR SERVICES; PROVIDING IN PERSON HOLISTIC HEALTH CARE SERVICES; CONVALESCENT HOMES; MEDICAL CLINICS; HOSPITALS; NURSING SERVICES; MASSAGES; SANATORIUMS; VETERINARY SERVICES; PHYSICAL REHABILITATION SERVICES, ESPECIALLY CORRECTION TECHNIQUES, PHYSICAL THERAPIES AND THERAPIES CONNECTED THEREWITH FOR MUSCLE SUPPORT, PREVENTION OF OVER-USAGE, MOVEMENT THERAPY, CIRCULATORY SYSTEM RE-HABILITATION, MUSCLE REHABILITATION, HEALING AND PREVENTION OF INJURIES AND ADDITIONAL INJURIES; MEDICAL, HYGIENIC AND BEAUTY CARE TREATMENT FOR HUMANS AND ANIMALS, IN CLASS 44 (U.S. CLS. 100 AND 101).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON FED REP GERMANY APPLICATION NO. 302008038891, FILED 6-16-2008, REG. NO. 007171382, DATED 5-27-2009, EXPIRES 8-20-2018.

SEC. 2(F).

SER. NO. 77-625,546, FILED 12-3-2008.

JOHN E. MICHOS, EXAMINING ATTORNEY

UNITED STATES PATENT AND TRADEMARK OFFICE · DEPARTMENT OF COMMERCE

David J. Kappos

Director of the United States Patent and Trademark Office

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

The Hygenic Corporation, Petitioner, v. INGO KUMBRINK (an Individual) Respondent.	Cancellation No. Registration No.: 3949702 Mark: K-TAPING

PETITION FOR CANCELLATION

The Hygenic Corporation, a corporation organized under the laws of Delaware, located and doing business in Akron, Ohio ("Petitioner"), believes that it is or will be damaged by Registration No. 3949702, issued on the Principal Register on April 26, 2011 to Ingo Kumbrink, an individual ("Respondent") for the mark K-TAPING. Petitioner hereby petitions for a cancellation of said registration pursuant to Section 18 of the Trademark Act, 15 U.S.C. § 1068.

As grounds for this petition, Petitioner alleges:

1. Ingo Kumbrink, an individual ("Kumbrink") filed Application Serial No. 77625546 with the U.S. Patent and Trademark Office ("USPTO") for the mark K-TAPING in connection with "Physiotherapeutic treatment services by means of taping; physiotherapeutic, veterinary and medical services and treatments utilizing therapeutic taping; chiropractor services; providing in person holistic health care services; convalescent homes; medical clinics; hospitals; nursing services; massages; sanatoriums; veterinary services; physical rehabilitation services, especially correction techniques, physical therapies and therapies connected therewith for muscle support, prevention of over-usage, movement therapy, circulatory system rehabilitation, muscle rehabilitation, healing and prevention of injuries and

additional injuries; medical, hygienic and beauty care treatment for humans and animals" in International Class 44, on December 3, 2008.

2. Upon information and belief, Respondent is the current owner of record of the Application.

3. Petitioner is a leading developer, manufacturer, and seller of products in the physical therapy, chiropractic, massage therapy, athletic training, and sports medicine fields.

4. Petitioner has made substantial preparations and invested substantial resources in developing a new and improved type of kinesiology tape.

5. Kinesiology tape is a permeable, flexible adhesive tape applied to users' skin in order to reduce pain, optimize performance, prevent injury, and promote healing. It was first developed in the mid-1970s and, since then, has become a popular tool in the physical therapy, chiropractic, massage therapy, athletic training, and sports medicine fields.

6. Practitioners and their patients have come to abbreviate "kinesiology tape" to "k tape."

7. Petitioner's THERABAND™ kinesiology tape was released on January 1, 2015 and has already received orders from customers.

8. In order to be competitive, Petitioner needs to be able to use, without restriction, the abbreviations "k tape" and "k taping" in connection with the sale of its kinesiology tape to practitioners and customers and educational efforts in connection therewith.

COUNT I – MERELY DESCRIPTIVE/GENERIC

9. Upon information and belief, Respondent's K-TAPING mark is or has become merely descriptive and/or generic for the type of services with which the mark is used.

10. Upon information and belief, purchasers refer to the type of tape used to perform the services offered under the K-TAPING mark as "kinesiology tape," and utilize the

abbreviation "k tape" to refer to the tape and " k taping" to refer to the application of the tape.

12. Upon information and belief, a relevant consumer viewing "K-TAPING" in connection with Respondent's goods and educational efforts therewith will recognize it as an abbreviation for "kinesiology taping."

13. Petitioner believes that it is being and will continue to be damaged by the continued registration of Registration No. 3949702 and requests that said registration be cancelled.

COUNT II – FRAUD

14. Petitioner incorporates the allegations contained in ¶¶1-13 as if fully restated herein.

15. Pursuant to the Lanham Act, 15 U.S.C. § 1051(b), Respondent declared "no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive" via the filing of the application that ultimately matured into Registration No. 3949702.

16. Upon information and belief, Respondent knew or should have known that practitioners and patients referred to the tape used to perform the services listed in its registration as "kinesiology tape."

17. Upon information and belief, Respondent knew or should have known that practitioners and patients referred to "kinesiology tape" generically as "k tape" and the application thereof as "k taping."

18. Upon information and belief, the examiner who addressed the application that resulted in Registration No. 3949702 would have found material the fact that the tape

identified in the application is generically referred to as "kinesiology tape" and that practitioners and patients refer to "kinesiology tape" as "k tape" and the application thereof as "k taping."

19. Upon information and belief, Respondent had knowledge of the falsity of the declaration regarding its right to exclusively use "k taping" in connection with kinesiology tape.

20. Upon information and belief, Respondent crafted its identification of services and failed to disclose that "k taping" stood for the application of "kinesiology tape" with the intent to deceive the USPTO.

21. Upon information and belief, Respondent made the declaration regarding its exclusive right to use the K-TAPING mark with reckless disregard for the truth or falsity of the facts asserted therein.

22. Petitioner believes that it is being and will continue to be damaged by the continued registration of Registration No. 3949702 and requests that said registration be cancelled in its entirety.

Petitioner hereby appoints Christina J. Moser, member of the law firm of Baker & Hostetler LLP and member of the Bars of the State of Ohio and State of California, to prosecute this cancellation proceeding and transaction all business in and before the USPTO in connection therewith.

Please address all correspondence to Christina J. Moser at Baker & Hostetler LLP, PNC Center, 1900 E. 9th Street, Suite 3200, Cleveland, Ohio 44114-3482.

Respectfully submitted,

Date: January 22, 2015

By: */s/Christina J. Moser*

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The Hygenic Corporation

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petition for Cancellation was served via first-class mail, postage prepaid, on this 22nd day of January, 2015 to the following:

Respondent:
Ingo Kumbrink
Friegstrasse 5
Dortmund Germany 44229

And

Stewart J. Bellus & Aimee L. Kaplan
Attorney of Record
Collard and Roe PC
1077 Northern Blvd.
Roslyn, NY 11576-1614

By: */s/Christina J. Moser*
Christina J. Moser